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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/623,879

07/18/2003

Francisco J. V. Hernandez

J&J -2124

5896

27777

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03/28/2006

PHILIP S. JOHNSON  
JOHNSON & JOHNSON  
ONE JOHNSON & JOHNSON PLAZA  
NEW BRUNSWICK, NJ 08933-7003

EXAMINER

STEPHENS, JACQUELINE F

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 03/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/623,879

Applicant(s)

HERNANDEZ, FRANCISCO J. V.

Examiner

Jacqueline F. Stephens

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 July 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

*Jacqueline F. Stephens*  
EXAMINER AA 3761

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 7/5/05 have been fully considered but they are not persuasive. Applicant argues that the combination of Feist/Yarbrough does not disclose a permanent surfactant element. However, 'permanent' is a relative term. The surfactant is permanent when in use, but may not be permanent if the garment is washed. Giving the broadest reasonable interpretation, the examiner interprets the surfactant of Feist/Yarbrough to be permanent.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Feist et al. USPN 5300054 in view of Yarbrough et al. USPN 5520673.

As to claim 1, Feist discloses an absorbent product comprising an inner sheet 34, an outer sheet 36, and an absorbent core 42. The absorbent core is positioned between the outer and inner sheets and is enveloped by a transfer layer 72 made of an absorbent material. The transfer layer comprises a polymeric material (col. 13, lines 25-50 and col. 25, lines 35-39) and has a basis weight of, which is within the claimed range (col. 13, lines 51-55).

Feist does not disclose the transfer layer is treated with a surfactant. Yarbrough discloses treating a polymeric layer used to wrap an absorbent core with a surfactant to minimize the resistance to the penetration of aqueous liquids therethrough (Yarbrough col. 1, lines 37-47). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the transfer layer of Feist with a surfactant for the benefits taught in Yarbrough.

As to claims 2 and 3, see Feist, Figure 9, elements 42 and 72.

As to claim 4, see Feist col. 13, lines 25-28.

As to claims 5, Feist/Yarbrough does not specifically disclose the claimed basis weight. Although Feist as described in col. 13, lines 51-54 and col. 14, lines 11-36 does not give the claimed basis weight, the applicant fails to disclose that the 8-12 g/m<sup>2</sup> is such a critical value or gives unexpected results so to exclude a 17 g/m<sup>2</sup>. Even though Feist/Yarbrough teaches a basis weight of 17 g/m<sup>2</sup> there is not a significant difference in the basis weight values taught by Feist/Yarbrough to suggest Feist/Yarbrough teaches away from the claimed values. Additionally, Feist/Yarbrough teaches the acquisition/distribution layers for the same purpose, to wick fluids. More particularly, "where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation", *In re Aller et al*, 105 USPQ 233.

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As to claims 6-8, with respect to the limitation of the percentage of the surfactant in the transfer layer, the specification contains no disclosure of either the critical nature of the claim limitations nor any unexpected results arising therefrom, and that as such the limitations were arbitrary and therefore obvious. Feist/Yarbrough teach the concept of a permanent surfactant (Yarbrough col. 1, lines 43-45). One having ordinary skill in the art would be able to determine through routine experimentation the ideal levels of surfactant needed for a particular application. Moreover, discovering optimum values only involves routine skill in the art, *In re Boesch*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jacqueline F Stephens  
Examiner  
Art Unit 3761

October 3, 2005